

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 22-0752V

KERRY ANN FLETCHER,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: December 4, 2023

Paul R. Brazil, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Steven Santayana, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On July 11, 2022, Kerry Ann Fletcher filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a bilateral shoulder injury related to vaccine administration (“SIRVA”) resulting from a pneumococcal conjugate vaccine received in her left arm on December 7, 2020 and a tetanus diphtheria acellular pertussis (“Tdap”) vaccine received in her right arm on December 7, 2020. Petition at 1. Petitioner further alleges that the vaccines were received in the United States, her SIRVA symptoms in both shoulders persisted for more than six months, and neither Petitioner, nor any other party, has ever filed an action, or received compensation in the form of an award or settlement, for her vaccine-related injury. Petition at ¶¶ 1, 11-13. The case was assigned to the Special Processing Unit of the Office of Special Masters.

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

On September 26, 2023, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On December 1, 2023, Respondent filed a proffer on award of compensation ("Proffer") indicating Petitioner should be awarded \$73,000.00, in addition to funds to satisfy a Medicaid lien. Proffer at 2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner the following:**

- A. A lump sum payment of \$73,000.00 (in pain and suffering) in the form of a check payable to Petitioner; and**
- B. A lump sum payment of \$5,579.35, representing compensation for satisfaction of the Equian LLC Medicaid lien, in the form of a check payable jointly to Petitioner and Equian LLC.**

Petitioner agrees to endorse the check to Equian LLC for satisfaction of the Medicaid lien and mail it to the following address:

EQUIAN, LLC
Patient's Name: Kerry Ann Fletcher
Event Number: 14322776-1466531
P.O. Box 34060
Louisville, KY 40232-4060

These amounts represent compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

B. Medicaid Lien

Respondent proffers that petitioner should be awarded funds to satisfy the Equian LLC Medicaid lien in the amount of **\$5,579.35**, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action Equian LLC may have against any individual as a result of any Medicaid payments Equian LLC has made to or on behalf of petitioner from the date of her eligibility for benefits through the date of judgment in this case as a result of her alleged vaccine-related injury suffered on or about December 7, 2020, under Title XIX of the Social Security Act. Petitioner agrees.

These amounts represent all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through two lump sum payments as described below and requests that the Chief Special Master's decision and the Court's judgment award the following¹:

- A. A lump sum payment of **\$73,000.00**, in the form of a check payable to petitioner; and
- B. A lump sum payment of **\$5,579.35**, representing compensation for satisfaction of the Equian LLC, in the form of a check payable jointly to petitioner and Equian LLC.

Petitioner agrees to endorse the check to Equian LLC for satisfaction of the Medicaid lien and mail it to the following address:

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

EQUIAN, LLC
Patient's Name: Kerry Ann Fletcher
Event Number: 14322776-1466531
P. O. Box 34060
Louisville, Kentucky 40232-4060

III. Summary of Recommended Payments Following Judgment

A. Lump sum payable to petitioner, Kerry Ann Fletcher:	\$73,000.00
B. Lump sum payable jointly to petitioner and Equian LLC:	\$5,579.35

Respectfully submitted,

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s/ Steven C. Santayana
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Dated: November 30, 2023